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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,507	04/14/2005	Eiji Oki	5259-000051/NP	8125
27572 7590 05/14/2009 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				
EXAMINER				
WANG, QUAN ZHEN				
ART UNIT		PAPER NUMBER		
2613				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/531,507

**Applicant(s)**

OKI ET AL.

**Examiner**

QUAN-ZHEN WANG

**Art Unit**

2613

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 24 and 35-40.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 4, 6, 8, 10, 12 and 14-17.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Quan-Zhen Wang/  
Primary Examiner, Art Unit 2613

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 5/1/2009 have been fully considered but they are not persuasive.

Regarding claim 4, Applicant argues, "FIG. 2 of Chang merely illustrates two different optical paths A and B, and fails to explicitly disclose a bi-directional path. ... FIG. 2 of Chang merely relates to the conventional art of Chang, and it is irrelevant to the embodiments of Chang such as FIGS. 6A and 6B pointed out by the Examiner with respect to current independent Claim 1. Therefore, even if FIG. 2 of Chang suggested a bi-directional path (with which the Applicant respectfully disagrees), Chang neither discloses nor suggests that the determination on the necessity of signal regeneration for a bi-directional path is made in the embodiments of Chang." However, in accordance with MPEP, "The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103" (MPEP 2112). Firstly, Chang clearly illustrates that the system is a bi-directional system in figs. 1 and 2. Applicant argues; secondly, figs. 1-2 of Chang simply illustrate "next generation optical network" and figs. 6A and 6B illustrate a method of network routing for a network shown in figs. 1-2. Therefore, Chang's teaching reads on the claim.

Regarding claims 6, 8, 10, 12, and 14-17, as it is indicated in the office action, Chang further teaches a 3R source node, a 3R destination node, a source node, and a destination node (figs. 2 and 4). Chang further discloses a 3R source node of any one of a plurality of different 3R sections overlapping on an optical path that passes through the one optical node device (fig. 5b). Chang does not specifically disclose: when one optical node device is a 3R source node of any one of a plurality of different 3R sections overlapping on an optical path that passes through the one optical node device, and the one optical node device is not a 3R source node or 3R destination node of other 3R sections, the determining unit is provided with: a comparing unit which compares the number of 3R relay implementations for both the case where the one optical node device functions as a 3R source node and where the one optical node device does not function as a 3R source node, with reference to the 3R section information related to an optical path from the one optical node device to the destination node; and a unit which, when the number of 3R implementations in the case where the one optical node device functions as a 3R source node is less than the number of 3R implementations in the case where the one optical node device does not function as a 3R source node, decides that the one optical node device is an optical node device that implements 3R relay based on a comparison result from the comparing unit; when one optical node device is an optical node device corresponding to a 3R destination node, and is not a destination node, the determining unit is provided with a unit which decides that the one optical node device is an optical node device that implements 3R relay by using the one optical node device as a 3R source node, and a next hop optical node device as a 3R destination node; when one optical node device does not belong to any one of 3R sections having a 3R source node on an optical path that passes through the one optical node device, the determining unit is provided with a unit which decides that the one optical node device is an optical node device that implements 3R relay by using the one optical node device as a 3R source node, and a next hop optical node device of the one optical node device as a 3R destination node; wherein the determining unit is provided with a unit which decides that the optical node device itself is a 3R source node in the upstream optical path with an optical node device which has sent the message as a 3R destination node when the optical node device itself receives the message in the upstream optical path. However, the claimed comparing unit, deciding unit, and the steps would have been obvious for one of ordinary skill in the art. For example, Chang specifically discloses, regardless of routing objectives and implementations, there will come a time when one needs to know whether a potential next hop can be reached without OEO regeneration (fig. 6 and paragraph 0031-0032). Chang further discloses to decide a route and to decide at which node in the optical path needs to go through OEO for signal regeneration (fig. 7, paragraphs 0033-0034); Chang further discloses that the selection of next hop would depend on whether OEO was required (fig. 8, paragraph 0037).

Regarding claim 6, Applicant argues, "... even referring to the disclosure of Chang pointed out by the Examiner, Chang neither discloses nor suggests the technical ideas that: the number of times of signal regeneration is determined for both the case in which signal generation is performed in a given node and the case in which signal generation is not performed in the given node; the number of times of signal regeneration is involved in an optical path from the given node to a destination node; and whether or not signal regeneration is to be performed in the given node is determined based on the comparison of the number of times of signal regeneration." Even according to Applicant, "signal generation is performed in a given node and the case in which signal generation is not performed in the given node". In other words, where the signal generation is performed is nothing more than a design choice. Therefore, the claim is obvious over Chang.

Regarding claims 8-12, Applicant argues, "... as can be understood from the recitation of Claim 8, the invention as recited in Claim 8 generates 3R section information anew. In contrast, Chang neither expands a photonic cell nor generates a new photonic cell." However, Chang discloses that each node which could belong to different cells of other nodes has its own cell comprising different nodes. Therefore, for each specific transmission, the 3R section information is specific based on the source and destination nodes. Therefore, the claim is obvious over Chang. In addition, information regarding the photonic cells in the network could be obviously stored in a key place or distributed to each and every node in the network since storing information at different nodes in a network involves only routine skill in the art. Similarly, claims 14 and 16 only recites obvious variations of Chang's teaching. Therefore, the rejections of claims 6, 8, 10, 12, and 14-17 still stand. .